

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

Mark Fitzhenry,	)	Case No.: <u>2:21-cv-4043-RMG</u>
	)	
Plaintiff,	)	
	)	
vs.	)	<b>NOTICE OF REMOVAL</b>
	)	
Nations Lending Corporation,	)	
	)	
Defendant.	)	
	)	

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In accordance with 28 U.S.C. §§ 1332(d)(2), and 1453, defendant Nations Lending Corporation (“Nations”) hereby removes the above-captioned lawsuit from the South Carolina Court of Common Pleas for the Ninth Judicial Circuit in the County of Charleston, where it is currently pending, to the United States District Court for the District of South Carolina, Charleston.

As grounds for the removal of this case, Nations states as follows:

1. On or about November 15, 2021, Plaintiff Mark Fitzhenry filed a Class Action Complaint (the “Complaint”) against Nations, purportedly on behalf of himself and a class of people similarly situated, in the South Carolina Court of Common Pleas for the Ninth Judicial Circuit. The Complaint has been attached to this Notice as Exhibit A.

2. On November 18, 2021, Fitzhenry served the Complaint on Nations.

3. The Complaint alleges violations of the South Carolina Telephone Privacy Protection Act (“SCTPPA”), S.C. Code § 37-21-10, *et. seq.*, on behalf of a class of consumers whose telephone numbers appear on the National Do Not Call Registry and were purportedly contacted by Nations at the telephone number appearing on the National Do Not Call Registry.

*See Compl.* ¶ 27.

4. Plaintiff's request for relief includes statutory damages, injunctive relief, and other relief. Prayer for Relief ¶¶ A-J.

5. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) which grants a federal district court original jurisdiction over a civil action in which minimal diversity exists among the parties, there are 100 or more members of the alleged class, and the amount in controversy exceeds the sum or value of \$5 million.

6. Minimal diversity exists when any member of a class of plaintiffs is a citizen of a state different from that of any defendant. 28 U.S.C. § 1332 (d)(2)(A).

7. Plaintiff is a citizen of the state of South Carolina. Compl. ¶ 5.

8. Nations is a citizen of the state of Ohio for purposes of 28 U.S.C. § 1332. Compl. ¶ 6. Nations is an Ohio corporation with its principal place of business in Independence, OH. Nations is the only defendant named in the Complaint. *See generally* Compl.

9. Plaintiff alleges a class definition to include all persons with a South Carolina area code to whom (1) at any time from May 18, 2018 until trial, (2) Defendant, or someone on its behalf, (3) placed at least one call, (4) to a number on the National Do Not Call Registry or (5) where it failed to provide the telephone number and address at which the caller may be contacted at the outset of the call. Compl. ¶ 27.

10. Plaintiff alleges that Nations, "violated the SC Telephone Privacy Protection Act by contacting a South Carolina number that was listed on [the] National Do Not Call Registry." Compl. ¶ 38.

11. Plaintiff alleges that Nations, "also failed to identify themselves and provide the name of the person on whose behalf of the telephone solicitation is being made during the telemarketing calls in violation of the SCTPPA." Compl. ¶ 39.

12. Plaintiff further alleges that, “[b]ased on the automated nature of [the] calling campaign, there are likely thousands of class members. Individual joinder of these persons is impracticable.” Compl. ¶ 32.

13. Pursuant to 28 U.S.C. § 1332(d)(6), in any class action, the claims of the individual class members shall be aggregated to determine whether the amount in controversy exceeds the sum or value of \$5 million.

14. While Nations believes Plaintiff’s claims to be meritless, the allegations of the Complaint seek up to \$5,000 per violation per class member<sup>1</sup>. Prayer for Relief ¶ G.

15. When aggregated across the alleged class of thousands of people, the damages sought in this matter exceed \$5 million.<sup>2</sup>

16. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b) as it is being filed within thirty days of service of the Complaint on Nations, which occurred on November 18, 2021.

17. The United States District Court for the District of South Carolina, Charleston is located within the District of South Carolina, and venue is proper in this Court because it is the “district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

18. In accordance with 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served upon Nations is submitted herewith. *See* Exhibit A.

19. Upon the filing of this Notice of Removal, Nations shall furnish written notice thereof to Plaintiff as well as a copy of the Notice with the Clerk of the South Carolina Court of

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<sup>1</sup> Pursuant to the SCTPPA, “[i]f the court finds a willful violation, the court may, in its discretion, increase the amount of the award to an amount not exceeding five thousand dollars for each violation.” SC Code § 37-21-80(A) (2020).

<sup>2</sup> When multiplying the number of potential class members as asserted in the Complaint by the potential damages – 1,000 x \$5,000.00 = \$5 million – the amount in controversy meets the \$5 million threshold.

Common Pleas for the Ninth Judicial Circuit, County of Charleston pursuant to 28 U.S.C. § 1446(d).

Respectfully submitted,

s/ Robert H. Jordan

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ATTORNEYS FOR DEFENDANT

December 15, 2021  
Charleston, South Carolina